

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BARRY RENFOLD COOLEY,

Defendant.

8:02CR353

ORDER

This matter is before the Court on the Defendant's pro se motion regarding a potential reduction in sentence under 18 U.S.C. § 3582(c)(2) (Filing No. 750) and defense counsel's motion to withdraw (Filing No. 779). The U.S. Probation Office has prepared a worksheet recommending no reduction, and counsel was appointed.

The Defendant was found guilty after a jury trial of Count I of the Indictment charging him with conspiracy to distribute or possess with intent to distribute 50 grams or more of a mixture or substance containing cocaine base. The Court sentenced him to life imprisonment. The Defendant was held responsible for more than 3.5 kilograms of cocaine base. His base offense level was 38 based on the drug quantity and U.S.S.G. § 4B1.1 due to his career offender status. His total offense level was 38, and he was placed within Criminal History Category VI. His sentencing guideline range was 360 months to life imprisonment.

Under the recent amendments to the sentencing guidelines, the Defendant's base offense level would be 36. The career offender enhancement under § 4B1.1 would still apply and the Defendant's total offense level would be 37, his Criminal History Category would remain at VI, and his sentencing guideline range would remain

at 360 months to life imprisonment. Both the Defendant's conduct and sentencing predated the effective date of the Fair Sentencing Act, and therefore he is not entitled to relief under *Dorsey v. United States*, 132 S. Ct. 2321 (2012).

Accordingly,

1. The Defendant's motion regarding a potential reduction in sentence under 18 U.S.C. § 3582(c)(2) (Filing No. 750) is denied;
2. Defense counsel's motion to withdraw (Filing No. 779) is granted; and
3. The Clerk is directed to mail a copy of this order to the Defendant at his last known address.

Dated this 5th day of September, 2012.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge